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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ID #10809

ENERGY DIVISION **RESOLUTION E-4292**

December 1, 2011

REDACTED

R E S O L U T I O N

Resolution E-4292. Southern California Edison requests approval of a contract with Puget Sound Energy, Inc.

PROPOSED OUTCOME: This Resolution denies cost recovery for Southern California Edison's contract with Puget Sound Energy, Inc. The contract is denied without prejudice.

ESTIMATED COST: None

By Advice Letter (AL) 2358-E filed on July 13, 2009, supplemental AL 2358-E-A filed on November 16, 2009, supplemental AL 2358-E-B filed on April 1, 2011 and supplemental AL 2358-E-C filed on April 15, 2011.

SUMMARY

Southern California Edison Corporation's renewable energy power purchase agreement with Puget Sound Energy, Inc. is denied without prejudice.

Southern California Edison (SCE) filed Advice Letter (AL) 2358-E on July 13, 2009, as modified by AL 2358-E-A on November 16, 2009, AL 2358-E-B on April 1, 2011 and AL 2358-E-C on April 15, 2011, requesting the California Public Utilities Commission's (Commission) approval of a renewable purchase power agreement (PPA) with Puget Sound Energy, Inc. (Puget), a wholly-owned subsidiary of Puget Energy. Under the contract SCE would receive energy and green attributes from two operating wind facilities owned by Puget; the 157 megawatt (MW) Hopkins Ridge facility and 229 MW Wild Horse Ranch facility. For the purpose of meeting its RPS targets, SCE executed the approximate 4 year contract with Puget through bilateral negotiations. Both wind facilities have

been online since 2006 and are located in Washington State. The PPA obligates Puget to deliver a minimum of 640 gigawatt-hours (GWh) per year of energy and green attributes beginning on January 1, 2012 through 2015, or until a total of 2,560 GWh is delivered. In addition, the PPA provides for an option to Puget, subject to SCE's approval, to increase the quantity of energy and related green attributes to SCE any year of the contract term.

The PPA qualifies as a renewable energy credit (REC) -only contract as defined by Decision (D.) 10-03-021, as modified by D.11-01-025, based on the delivery structures proposed by SCE.

This resolution denies the PPA without prejudice because SCE has not clearly demonstrated its need for the energy and green attributes that would be procured under the PPA.

The following table summarizes the project-specific features of the agreement:

Generating Facilities	Type	Term Years	Annual Deliveries	Contract Start Date	Project Location
Hopkins Ridge and Wild Horse	Wind	~ 4 years	≥640 GWh	January 1, 2012	Columbia County, WA and Kittitas County, WA

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036 and SB 2 (1X).[1] The RPS program is codified in Public Utilities Code Sections 399.11-399.20.[2] Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that 33

[1] SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

[2] All further references to sections refer to Public Utilities Code unless otherwise specified.

percent of retail sales are served by eligible renewable energy resources no later than December 31, 2020.

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm and http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm.

NOTICE

Notice of AL 2358-E and supplemental ALs 2358-E-A, AL 2358-E-B and AL 2358-E-C were made by publication in the Commission's Daily Calendar. Southern California Edison states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

SCE's Advice Letter AL 2358-E was timely protested on August 3, 2009 by The Utility Reform Network (TURN) and the Coalition of California Utility Employees (CCUE). SCE responded to TURN and CCUE's protest on August 10, 2009.

DISCUSSION

SCE requests Commission approval of a new renewable energy contract

On July 13, 2009, Southern California Edison (SCE) filed Advice Letter (AL) 2358-E requesting California Public Utilities Commission (Commission) approval of a power purchase agreement (PPA) with Puget Sound Energy, Inc. (Puget), a wholly-owned subsidiary of Puget Energy. The contract was negotiated bilaterally outside of SCE's 2008 Renewables Portfolio Standard (RPS) solicitation. Puget II has elected to sell to SCE the energy and green attributes from two of its operating wind facilities, 157 megawatt (MW) Hopkins Ridge and 229 MW Wild Horse Ranch, that are in excess of its current needs.

Pursuant to Decision (D.) 10-03-021, as modified by D.11-01-025, the PPA qualifies as a renewable energy credit only or "REC-only" contract for the purposes of compliance with California's RPS Program. On April 1, 2011, SCE filed supplemental AL 2358-E-B to bring the contracts into conformance with D.10-03-021, as modified by D.11-01-025, which authorized the use of Tradable

Renewable Energy Credits (TRECs) for RPS compliance. Specifically, SCE amended the contracts to include new standard terms and conditions and to demonstrate whether the contracts meet the TREC price cap and the limitation on the use of REC-only transactions established in D.10-03-021, as modified by D.11-01-025.

The PPA obligates Puget to deliver a minimum of 640 gigawatt hours (GWh) per year of energy and green attributes beginning on January 1, 2012 through 2015, or until a total of 2,560 GWh is delivered. In addition, the PPA allows Puget to provide additional energy and green attributes to SCE any year during the contract term, subject to SCE's approval. Confidential Appendix C includes a detailed discussion of the contractual pricing terms. Under the terms of the contract, SCE would begin receiving deliveries in March 2012.

SCE will take delivery of energy and green attributes at the Mid-Columbia trading hub and will use Puget's resources to manage the intermittent energy within both Bonneville Power Administration's and Puget's control areas. SCE will then schedule the energy directly with the California Independent System Operator (CAISO) upon receipt of the energy and/or sell the energy outside California. SCE will schedule firmed and shaped energy with green attributes directly with the CAISO, and/or sell energy without green attributes into the local market, and later attach the green attributes to import energy that will be scheduled into California. Both delivery options that SCE is proposing are consistent with the California Energy Commission (CEC) delivery requirements. Appendix A provides a schematic map of the delivery structure proposed in the PPA.

SCE requests that the Commission issue a resolution containing the following findings:

1. Approval of the Puget II Contract in its entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the Puget II Contract constitutes procurement by SCE from an eligible renewable energy resource ("ERR") for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources;

3. A finding that all procurement under the Puget II Contract counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
4. A finding that all procurement under the Puget II Contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
5. A finding that all procurement under the Puget II Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20% (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law);
6. A finding that the Puget II Contract, and SCE's entry into the Puget II Contract, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the Puget II Contract, subject only to further review with respect to the reasonableness of SCE's administration of the Puget II Contract; and
7. Any other and further relief as the Commission finds just and reasonable.

Energy Division Evaluated the PPA on the Following Grounds:

- Portfolio Need
- Consistency with SCE's Least-Cost, Best-Fit requirements
- Cost Containment

Demonstration of Need for the Puget PPA

The California RPS Program was established by Senate Bill (SB) 1078 and has been recently modified by SB 2 (1X) which becomes effective on December 10, 2011.[3] SB 2 (1X) makes significant changes to the RPS Program.[4] SB2 (1X) sets

[3] Pursuant to Gov. Code, § 9600(a), Legislation enacted during the Extraordinary Session goes into effect on the 91st day after adjournment of the special session. The 2011-2012 First Extraordinary Session adjourned on September 10, 2011.

[4] The Commission opened Rulemaking (R.) 11-05-005 (May 5, 2011) to implement the new RPS law.

new RPS procurement targets such that retail sellers must procure "…from January 1, 2011 to December 31, 2013…an average of 20 percent of retail sales…25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020."[5]

In light of recent information[6] provided to the Commission about SCE's current position relative to the RPS targets, as shown in Confidential Appendix B, the Commission finds that the short-term nature of the Puget contract is inconsistent with SCE's need requirements.

Consistency with SCE's Least-Cost Best-Fit (LCBF) Requirements

The LCBF decision directs the utilities to use certain criteria in their bid ranking.[7] The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. SCE's bid evaluation includes a quantitative and qualitative analysis, as well as each proposal's absolute value to SCE's customers and relative value in comparison to other proposals. The basic components of SCE's LCBF evaluation and selection criteria and process for RPS contracts were established in the Commission's LCBF Decisions D.03-06-071 and D.04-07-029. Consistent with these decisions, the three main steps undertaken by SCE are: (1) initial data gathering and verification; (2) a quantitative assessment of proposals, and; (3) adjustments to selection based on proposals' qualitative attributes. SCE applied these criteria to the proposals received in the 2008 solicitation in order to establish a short-list of proposals from bidders with whom SCE would engage in contract discussions.

SCE examined the reasonableness of the PPA using the same LCBF evaluation methodology it uses for RPS offers received for the 2008 RPS Solicitation. Although the PPA was negotiated bilaterally, SCE determined that the contract

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[5] See § 399.15(b)(2)(B), SB 2 (1X)

[6] See Southern California Edison Company's (U 338-E) 2011 Renewables Portfolio Standard Procurement Plan, Volume 1, Appendix C

[7] *See* D.04-07-029

was reasonable and compared favorably to proposals SCE received in its 2008 solicitation.

The Commission finds that SCE adequately examined the reasonableness of the PPA utilizing its LCBF methodology during the time the contract was being negotiated and executed.

Cost Containment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess whether a proposed RPS contract has above-market costs. Contracts that meet certain are eligible for above-MPR funds (AMF). Based on the Puget II project's January 1, 2012 anticipated online date, SCE estimates that the price of the contract is below the applicable 2008 MPR.

Based on the Puget project's January 1, 2012 anticipated online date, SCE estimates that the price of the contract is below the applicable 2008 MPR. Accordingly, there would not be any above-market costs associated with the contract.

Protests

The Utility Reform Network (TURN) and the Coalition of California Utility Employees (CCUE) filed a joint protest to AL 2358-E on August 3, 2009. TURN and CCUE urge the Commission to withhold approval of the Puget contract on three counts. On August 10, 2009, SCE submitted a response to the protest filed jointly by TURN and CCUE.

First, TURN and CCUE argue that pending RPS legislation (Senate Bill 14 and Assembly Bill 64) would modify the definition of "delivery" and which could render all or part of the output from Puget ineligible for the RPS program. Since the protest was filed, the Governor vetoed both bills, rendering the parties' protest moot. TURN and CCUE's protest on this basis is denied without prejudice.

Second, TURN and CCUE assert that the Puget contract conflicts with a once-pending Commission decision that would authorize the use of tradable renewable energy credits (RECs) and would put a cap on their use. As a result, TURN and CCUE "urge(d) the Commission to ensure that concerns over the excessive use of 'REC-only' deals are given appropriate consideration". In D.10-

03-021, as resolved by D.11-01-025 on January 13, 2011, the Commission set the rules for the use of TRECs for RPS compliance and for the TREC market which limits the use of TRECs to no more than 25% of SCE's annual procurement target (APT). Because of the Commission denies the Puget PPA, this protest is moot. Third, TURN and CCUE claim that the Puget project "does not benefit California's environment or economy." In SCE's response to the TURN/CCUE joint protest, SCE states that the CPUC has previously rejected TURN's argument that out-of-state RPS contracts do not benefit ratepayers. SCE further argues that the Legislature disagrees with the TURN and CCUE assertion since certain out-of-state facilities, such as Puget, are considered RPS-eligible resources. TURN and CCUE's protest on this basis is denied without prejudice.

Confidential Information

The Commission, in implementing Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

<u>The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.</u>

<u>COMMENTS</u>

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS AND CONCLUSIONS

1. The Puget contract qualifies as a REC-only contract as defined by D.10-03-021, as modified by, D.11-01-025.
2. The California Energy Commission has determined that the PPA meets the California Energy Commission's delivery requirements for RPS eligibility.
3. SB 2 (1X) makes significant changes to the RPS Program, including setting new targets through 2020.
4. The short-term nature of the Puget contract is inconsistent with SCE's RPS portfolio need requirements.
5. SCE adequately examined the reasonableness of the Puget contract utilizing its Least-Cost, Best-Fit methodology during the time the contract was being negotiated and executed.
6. The Puget II contract includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
7. Based on the Puget project's January 1, 2012 anticipated online date, SCE estimates that the price of the contract is below the applicable 2008 MPR. Accordingly, there would not be any above-market costs associated with the contract.
8. TURN and CCUE's protests are denied without prejudice.
9. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
10. Advice Letter 2358-E, and Supplement Advice Letters 2358-E-A, 2358-E-B and 2358-E-C should be denied without prejudice.

THEREFORE IT IS ORDERED THAT:

1. Southern California Edison's contract with Puget Sound Energy, Inc. filed in Advice Letter 2358-E, and Supplement Advice Letters 2358-E-A, 2358-E-B and 2358-E-C is denied without prejudice.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 1, 2011; the following Commissioners voting favorably thereon:

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PAUL CLANON
Executive Director

Appendix A

CEC Letter Regarding Eligibility of the Puget II Contract's Delivery Structure

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

August 11, 2009

The California Energy Commission, through its staff, has reviewed the proposed contracting structure between Puget II and Southern California Edison, as described in the excerpt from page 5 of Advice Letter #2358-E in "Attachment A," and as shown in the schematic design from page 6 of the Advice Letter titled, "Attachment B — Puget II/Southern California Edison Delivery Structure."

Assuming that all eligibility requirements for the Renewables Portfolio Standard (RPS) are met regarding all parties shown in Attachment B, including participation in the Energy Commission's Renewables Portfolio Standard Tracking and Verification System, the Energy Commission staff has determined that the proposed contracting structures would meet the RPS delivery requirements according to the *Renewables Portfolio Standard Eligibility Guidebook* (CEC-300-2007-006-ED3-CMF, January 2008).

Tony Gonçalves
Manager, Renewable Energy Office
California Energy Commission

Attachments

ATTACHMENT A

Puget II/Southern California Edison

Under the Puget II Contract, SCE will take delivery of electric energy and green attributes at the Mid-Columbia trading hub and will use Puget's resources to manage the intermittent energy within both BPA's and Puget's control areas. SCE will then import the energy into California in a manner that is compliant with the California Energy Commission's ("CEC") out-of-state RPS delivery requirements.

In managing the electric energy, SCE will employ the same fundamental economic principles as it does with its current (non-ERR)[8] power purchase agreements ("PPAs") for out-of-state resources by:

- Scheduling the energy directly into California upon receipt of the energy, and/or
- Selling the energy outside California, whichever yields the most value to SCE's customers.

Analogous to the scenarios described immediately above, SCE will self-manage the green attributes as follows by:

- Scheduling firmed and shaped energy with green attributes directly into California as an import, and/or
- Selling energy without green attributes into the local market, and later (within the same calendar year that the facilities produced the energy) tagging import schedules with the green attribute identifier consistent with the CEC delivery requirements.[9]

In all scenarios, SCE will demonstrate delivery of the wind generation to an in-state market hub or in-state location as specified in the CEC's "Delivery Requirements" as required in the CEC RPS Eligibility Guidebook, including by:

- Importing energy into California within the same calendar year the Puget projects produce the respective energy, and
- Participating in the CEC's approved RPS tracking and verification system.

The following diagram illustrates the deal structure and energy management scenarios described in this section.

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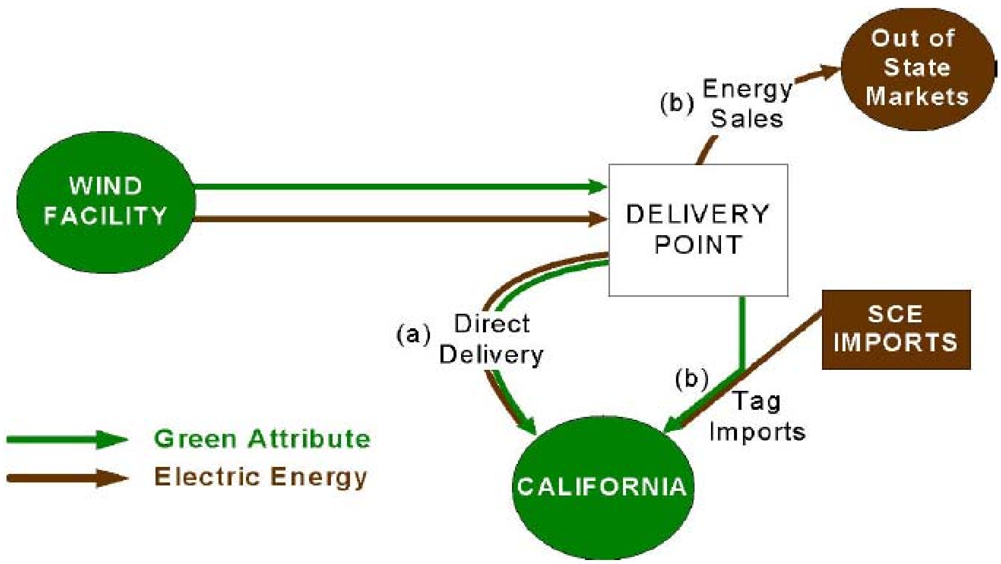
[8] "ERR" refers to an eligible renewable energy resource.

[9] *See* Renewables Portfolio Standard Eligibility Guidebook (Third Edition), publication # CEC-300 2007-006-ED3-CMF, adopted December 19, 2007.

ATTACHMENT B

PUGET II/SCE ENERGY DELIVERY STRUCTURE



Confidential Appendix B

Southern California Edison's RPS Energy Forecast

[REDACTED]

Confidential Appendix C

Summary of Puget II Contract Terms and Conditions

[REDACTED]